STATEMENT OF SUZAN SHOWN HARJO, PRESIDENT OF THE MORNING STAR INSTITUTE, ON IMPLEMENTATION OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT, BEFORE THE COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, IN THE HEARING OF JULY 25, 2000, WASHINGTON, D.C.

Mr. Chairman, Mr. Vice Chairman and Members of the Committee, it is with deep respect and great appreciation that I greet you and commend your sincere efforts to work with Native Peoples to make a better world for our coming generations and to bring honor to the United States in its dealings with us.

Thank you for inviting The Morning Star Institute to testify on implementation of the Native American Graves Protection and Repatriation Act. Morning Star is a national Native rights organization that is governed by a board of traditional and tribal leaders, cultural rights specialists and artists. Founded in 1984, Morning Star is devoted to Native Peoples' cultural and traditional rights and arts promotion.

I am Cheyenne and Hodulgee Muscogee, and a citizen of the Cheyenne & Arapaho Tribes of Oklahoma. My involvement in issues related to the return of our dead relatives, living beings and cultural property has been lifelong and paramount, personally and professionally. Since the 1960s, I have worked with Native Peoples hemisphere-wide to defend and advance our cultural and traditional rights.

I was privileged to have been a part of the historic gathering of traditional religious leaders and practitioners at Bear Butte in 1967, which lead to the development of the religious freedom and repatriation laws. In the mid-1970s, I was an organizer of the World Council of Indigenous Peoples and an author of its foundation statement on cultural and religious rights. During the Carter Administration, as Special Assistant for Indian Legislation & Liaison, I was principal author of the President's Report to Congress on American Indian Religious Freedom (1979) and coordinator of the year-long 50-agency implementation of the American Indian Religious Freedom Act of 1978.

During the 1980s, I was Executive Director of the National Congress of American Indians and a Trustee of the Museum of the American Indian. I selected the Native participants for and joined the National Dialogue on Native American/Museum Relations, the recommendations of which are embodied in the Native American Graves Protection and Repatriation Act. I was one of two Native negotiators of both the repatriation provision of the National Museum of the American Indian Act of 1989 and the Native American Graves Protection and Repatriation Act of 1990. A Founding Trustee of the National Museum of the American Indian (1990-1996), I was the principal author of the NMAI Trustees Statement on Repatriation (1991).

Slightly over ten years ago, I testified before the Committee, urging expeditious passage of the Native American Graves Protection and Repatriation Act. The NAGPRA was widely supported throughout Native America. The museum community, as represented by the American Association of Museums, supported NAGPRA. The Society for American Archaeology, Archaeological Institute of America and the American Association of Physical Anthropologists supported NAGPRA.

In the end, only the Department of the Interior opposed the Act. In a letter of October 2, 1990, to Representative Morris K. Udall, Interior Deputy Assistant Secretary Scott Sewell objected to several critical sections of the repatriation legislation. He recommended:

. deleting the definition of "sacred object" from Section 2 and not requiring the return of sacred objects.

. deleting language from Section 3 (a) establishing aboriginal territory as a basis for determining ownership of cultural items excavated or discovered on federal or tribal lands.

. deleting language for Section 5 (b)(2) specifying that nothing in the Act may be construed to authorize the initiation of new scientific studies or other means of acquiring or preserving additional scientific information.

. changing Section 5 (c) to provide extensions of the inventory deadline to federal agencies.

. deleting the requirement in Section 8 (c) that the Review Committee compile an inventory of culturally unidentifiable human remains in the possession or control of each federal agency.

. deleting the authorization in Section 10 for grants to Indian tribes, Native Hawaiian organizations and museums involved in the repatriation process.

Over the objections of the Interior Department, the Senate and House unanimously passed the Native American Graves Protection and Repatriation Act, and President Bush signed NAGPRA into law on November 16, 1990.

Primary implementation of NAGPRA was assigned to the Secretary of the Interior. The Secretary assigned it to the National Park Service, as recommended by the negotiators of NAGPRA. We Native negotiators, in particular, can be blamed for this. We observed the way in which the Smithsonian Institution was implementing the 1989 repatriation law, was disregarding the spirit of the policy and had stacked its repatriation committee against the Native interest. We insisted that implementation of NAGPRA be housed elsewhere.

The National Park Service was being widely commended in Indian country at the time for its Native American cultural initiatives and their promise of new relationship with Native Peoples. We bought it, the museum negotiators agreed, Congress embraced our recommendation and NPS became the lead agency under NAGPRA.

We ignored the lengthy history of NPS's institutionalized racism against Native Peoples and its conflicts of interest with repatriation, naively believing that it was a new day in Interior and NPS. The past ten years have provided numerous examples of NPS's repatriation conflicts and its inherent conflict of interest in implementing a law that specifically benefits Native Peoples.

The NPS has refused to publish some *Federal Register* notices for sacred objects, effectively vetoing agreements made between Indian tribes and museums or agencies, and requiring the parties, such as the Pueblo of Cochiti and the Cheyenne River Sioux Tribe, to appeal for relief to the Review Committee.

In determining the ownership of human remains found along the banks of the Columbia River near the town of Kennewick, Washington, the NPS has interpreted the meaning of aboriginal territory in an overly narrow fashion, not only refusing to recognize the binding Treaty between the Umatilla Tribe and the United States, but actually using a vacated decision by the Indian Claims Commission to determine that the remains did not come from Umatilla aboriginal territory.

NPS's top representative has made the pronouncement, in the context of the federal agencies developing their position in the Kennewick case, that NAGPRA is not a law enacted to benefit Native Americans.

The NPS has consistently pushed for additional scientific study of the remains of our dead, including techniques that destroy parts of their bodies, in contradiction of NAGPRA, as well as the standard rules of informed consent required of legitimate research of human remains.

The NPS has delayed publication of the annual report of the Review Committee that was highly critical of federal agency compliance with NAGPRA.

The NPS, which is delegated to provide staff support to the Review Committee, has failed after ten years to complete the inventory of cultural unidentifiable human remains required by the law.

The NPS has captured an increasingly larger portion of the monies appropriated for grants to Indian tribes, Native Hawaiian organizations and museums for "administrative costs," despite the fact that Congress appropriated a separate line item to cover such costs.

The NPS included language in its regulations forbidding federal agencies and museums from repatriating culturally unidentifiable human remains, despite the clear language in Section 11 (1) that nothing in the Act shall be construed to limit the authority of any federal agency or museum to return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations or individuals.

Implementation of NAGPRA was initially assigned to the Departmental Consulting Archeologist, the senior federal representative of one of the primary constituencies impacted by the Act. More recently, it is reported that implementation has been moved to the Assistant Director for Cultural Resource Stewardship and Partnerships.

There is a saying in the Cheyenne language that, roughly translated, means "the fox is in the hen house." The conflict of interest in having the NPS implement NAGPRA is quite real. The record of the NPS shows that it has actively and knowingly frustrated the will of Congress. The NPS is thwarting the law we worked so hard to put in place for the protection of our dead relatives and our sacred, living beings and our cultural property. These are not archeological or cultural "resources." They do not require NPS "stewardship."

The NAGPRA was an agreement on national policy and a compromise on process. Implementation of this policy and process has gotten off course. Our dead relatives are not "missing in action." Now, due to the many inventories completed by museums as required by NAGPRA, we know exactly where most of them are. However, they remain prisoners to a federal agency that values "science" over the rights of our dead people to rest in peace.

We ask you today to get the fox out of the hen house. Actually, we ask you to move the hen house out of reach of the fox. Please allow us to honor our dead relatives in our own way.

We urge you to advocate for the transfer of FY2001 monies designated for NAGPRA's implementation from the NPS to Interior's Departmental Secretariat.

We also urge you to initiate a General Accounting Office investigation of the way in which the NAGPRA has been administered and implemented and complied with over the past ten years.

We were wrong ten years ago about assigning implementation of NAGPRA to NPS, but I do not believe that we are wrong about ending it today before any more harm is done.

Again, thank you for your sincere efforts on our behalf in this most important part of Native Peoples' lives and future well-being.

Aho.

Please Note Our New Mailing Address:
611 Pennsylvania Avenue, SE, #377, Washington, DC 20003

July 26, 2000

The Honorable Daniel K. Inouye
Vice Chairman
Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Vice Chairman:

Thank you for taking time to listen to our experiences with the Native American Graves Protection and Repatriation Act of 1990 and to consider our recommendations for its future implementation. At the Committee's hearing yesterday, you asked me to elaborate on certain issues in my testimony. I am writing this letter in response to your request.

The first relates to what appears to be an unauthorized use of monies appropriated by Congress for grants to Indian tribes and museums for "administrative costs" of the National Park Service. The prepared statement submitted by Dr. Martin E. Sullivan includes the amounts reallocated by the National Park Service for FY1999 and FY2000. It is our understanding that the NPS did not make a reprogramming request for these amounts and that Congress did not approve a reprogramming of these amounts. We do not know the answers to the next logical questions: 1) How is it that the NPS can substitute its judgment for that of Congress in spending appropriated monies? 2) How long has this been going on? 3) How did NPS spend the money?

The second relates to regulatory restrictions imposed by the National Park Service that are contrary to the intent of Congress. Section 11 (1) states that nothing in the Act shall be construed to limit the authority of any federal agency or museum to return or repatriate cultural items to Indian tribes, Native Hawaiian organizations or individuals. However, 10.9 (e) (6) of the regulations states that museums retain possession of culturally unidentifiable human remains until section 10.11 is finalized. It has been ten years.

Ms. Stevenson may have misspoken yesterday when she said that the National Park Service has refused to publish only one *Federal Register* notice. As I pointed out in my prepared statement, there are at least two other instances – one involves the Pueblo of Cochiti and the other involves the Cheyenne River Sioux Tribe – where the NPS refused to publish notices. The these instances, the NPS refusal to publish notices was finally overcome, but only after years of efforts and appeals to the Review Committee.

I was unaware that the National Park Service had failed to investigate allegations of failure to comply with NAGPRA. This stands in sharp contrast to the situation in Hawaii, where it appears that NPS is saber-rattling to protect its own collection.

You also requested specific recommendations regarding a possible investigation by the General Accounting Office. I think such an investigation should focus on four areas:

1) monies and FTE appropriated by Congress since 1990 for implementation of NAGPRA by NPS and how they were used by NPS;
2) monies and FTE appropriated by Congress since 1990 for the NPS to comply with NAGPRA and how they were used by NPS;
3) NPS conflicts of interest with NAGPRA and any differences in which NPS addresses its own collections and those of other federal agencies and those of non-federal entities; and
4) monies and FTE appropriated by Congress for the Departments of Defense, Interior and Justice that have been used for involvement in the Kennewick case.

The figure you cited yesterday for the amount of money used on the Kennewick case is stunning and, if proven to be accurate, is indeed a fleecing of Native America.

The response of the National Park Service to the many concerns raised in the hearing about DNA research was most distressing. The court has not required DNA research in the Kennewick case. The federal government's own experts advised against conducting DNA research without tribal consent. Native Peoples are overwhelmingly opposed to DNA testing absent consent.

This obvious commitment to science first, irrespective of Native views and concerns or the law, is compounded by the federal government's use of the 1960 determination of the Indian Claims Commission as the basis for saying that the human remains from Kennewick were not in Umatilla aboriginal territory. That determination was vacated in 1964. The standing determination was made in 1966 and was based on the entire area of the Treaty of 1855, including the Kennewick area where the human remains were unearthed. Even if, as most people expect, the Interior Department is unable to determine cultural affiliation between the human remains and a present-day tribe, "ownership" still will be with the Cayuse, Umatilla and Walla Walla Peoples. I suspect that this "error" about the ICC decisions was made to assure that there was no claimant from which to obtain the necessary consent.

Finally, I ask the Committee to inquire further into the NPS claim to have two Native Americans working on NAGPRA. In light of the emphasis that NPS has placed on federally-recognized tribes in its implementation of NAGPRA, I would ask if the individuals are citizens of federally-recognized Indian tribes. Also, I would ask if the individuals are NPS employees or contractors.

If you have any other questions, I would be happy to try to answer them.

Aho.

Sincerely,

Suzan Shown Harjo
President, The Morning Star Institute